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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,681	12/31/2003	Bryon Paul Day	KCX-1226 (19589)	2161

7590 02/02/2007

Mr. Stephen E. Bondura
Dority & Manning, P.A.
P.O. Box 1449
Greenville, SC 29602

EXAMINER	
MULLIS, JEFFREY C	
ART UNIT	**PAPER NUMBER**
1711	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/749,681	DAY ET AL.	
	Examiner	Art Unit	
	Jeffrey C. Mullis	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 December 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *33-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *33-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

All previous rejections/objections are hereby withdrawn.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 33-50 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jaeger et al. (US 5,885,908). Patentees disclose multilayer films as in applicants nonwoven composite. Note Examples37-40 in column16 as well as method 2 in column 10. Note the use of block copolymer "E1" and "E2" in column 9, both of which contain a diblock/triblock copolymer mixture as is in applicants "a" and "b". While the melt flow rate is not disclosed, both the materials of patentees and applicants are useful for making a multilayer film and characteristics are therefore presumably such that they are suitable for such use and therefor similar or identical.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis

exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Claims 33-50 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hyde et al (US 6,497,949). Hyde discloses a process in which adhesive blends containing KRATON D1107 (a mixture of diblock and triblock copolymer and thus meeting the limitations of "a" and "b") are coated onto a nonwoven rayon backing (Examples 54-59). While the melt flow rate is not disclosed, both the materials of patentees and applicants are useful for making a multilayer film and characteristics are therefore presumably such that they are suitable for such use and therefor similar or identical.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Claims 33-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hyde et al (US 6,497,949) or Jaeger et al. (US 5,885,908) in view of Hoshi et al. (US 2003/0176546).

Arguably the examiner is incorrect re the MFR of the block copolymers of the primary references. However, Hoshi discloses use of applicants MFR for good processabilty at paragraph 105. Hence to use the MFR of the secondary reference in the primary reference would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention in the expectation of improving processabilty absent any showing of surprising or unexpected results.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis M-F, 9-5 pm at telephone number 571 272 1075.

Jeffrey C. Mullis
J Mullis
Art Unit 1711

JCM

1-19-07

Jeffrey Mullis
Primary Examiner
Art Unit 1711